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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

NO.....

BERTHA GORE AND HUBERT A. GORE, AND REGINALD GORE, infants, by their Guardian Ad Litem, Bertha Gore,

Petitioners,

vs.

UNITED STATES STEEL CORPORATION,

Respondent.

PETITION AND APPENDIX FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

To: *the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:*

I.

Statement of the Matter Involved

Bertha Gore and Hubert A. Gore, and Reginald Gore, infants, by their Guardian ad Litem, Bertha Gore, the petitioner herein, pray that a writ of certiorari be issued to review the final judgment of the Supreme Court of the State of New Jersey, reversing the judgment of the Superior Court of New Jersey, Law Division, Hudson County, with directions to the lower courts to dismiss petitioner's complaint, as amended. The opinion of the New Jersey Supreme Court is reported in 15 N.J. 301, 104 A.2nd 670. There was no opinion filed in the Superior Court. The opinion of the New Jersey Supreme Court is appended to this Petition.

II.

Jurisdiction

1. The judgment of the New Jersey Supreme Court was under date of May 3, 1954, and was entered on the same date.

2. There was no application for, or any Order entered respecting a re-hearing.

3. Jurisdiction of this Court is invoked under Title 28, U. S. Code, Section 1257, which provides, in part: Final judgment or decrees rendered by the highest court of the state in which a decision could be had, may be reviewed by the Supreme Court, as follows: * * * :

> "(3) By writ of certiorari * * * where any title, right, privilege, or immunity is specially set up or claimed under the constitution, * * *"

4. The Supreme Court of New Jersey is the highest court of the State.

III.

The Question Presented

5. The judgment of which review is sought is a final judgment of the Supreme Court of New Jersey, and dispositive of this litigation in the State of New Jersey in that it dismisses the complaint filed in the cause. (See opinion appended to this Petition).

6. The question presented for review is whether the courts of New Jersey may refuse to entertain an action by citizens of the State of Alabama upon a transitory action occurring in Alabama whereas the courts of New Jersey have consistently ac-

cepted such actions when brought by its own citizens against its own citizens, both natural and corporate.

IV.
Constitutional Provisions Relied On

7. The petitioners rely upon Article 4, Section 2, of the United States Constitution, reading as follows:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Petitioners also rely upon Section 1 of the 14th Amendment reading in part as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

V.
Statement of the Case

8. Your petitioners are respectively the dependent widow and children of Hubert Gore who died of an electrical shock while working as an employee of an independent contractor in a mill owned and operated by United States Steel Corporation at Fairfield, Alabama, on August 10, 1952.

United States Steel Corporation was originally incorporated in the State of New Jersey and is a citizen of that State, where it maintains large plants and other business interests, but also does business elsewhere throughout the country.

Your petitioners, who are members of the colored race, sought to escape the recognized prejudice existing in the State of Alabama in connection with actions instituted under the Death Act of that State, and instituted their action against United States Steel Corporation in its own State of New Jersey. A motion was made by the defendant to dismiss the action upon the ground that it would be inconvenient and expensive for the defendant to be obliged to defend the action in the State of New Jersey. The trial court denied the motion but upon appeal the New Jersey Supreme Court reversed and dismissed the action solely upon the ground that New Jersey was an inconvenient forum.

9. The constitutional question sought to be reviewed was first raised in the trial court in opposition to the motion there made to dismiss. The objection to the motion for dismissal on constitutional grounds was raised not only on oral argument but in a brief submitted to the trial court.

The question was thereafter squarely raised before the New Jersey Supreme Court and was resolved against the petitioners, the Court in the course of its opinion saying:

> "In support of the determination below the plaintiffs urge (1) that they have an absolute right, guaranteed by the privileges and immunities clauses of the federal constitution, to maintain their action in New Jersey * * * ."

(See opinion appended page 3).

The question thus squarely presented was resolved against your petitioners, the judgment of the Superior Court was reversed and the action was dismissed, the Court using the following language:

"It is now well recognized that the dismissal of a non-resident action under principles of *forum non conveniens* in no wise violates the privileges and immunities clauses of the Federal Constitution." (Opinion page 8).

VI.
Argument

It is the contention of these petitioners that the State of New Jersey by a long line of consistent decisions commencing in 1847 has established a policy whereby it has invariably taken jurisdiction over transitory actions occurring beyond its boundaries when instituted by its own citizens against citizens of the State of New Jersey, either natural or corporate. In the case of *Hale* v. *Lawrence*, 21 N. J. L. 714 (E. & A. 1847), it was said:

"A citizen of a foreign state has a constitutional and legal right to come in to our courts and prosecute his suits, if within their jurisdiction, and when he does so he is entitled to the same privileges and immunities and the same measure of justice in the administration of the law, as if he were a citizen of our state. This is so, not only in virtue of the Second Section of the Fourth Article of the Constitution of the United States, Wash. C. C. R. 381, but by the comity of all civilized nations." (At bottom page 740).

The Court in this same case also said (p.727):

"While the courts of New Jersey abstain from jurisdiction, where it is not clearly conferred by law, and whilst they will extend all proper courtesy to foreign courts and their decisions, they will not feel themselves at liberty to deny process and jurisdiction merely from considerations of courtesy to such courts, or from motives of convenience to themselves or suitors."

The position taken in the above cited case has been consistently followed down through the years, and because no one has ever had the temerity to question the right of a resident plaintiff to sue a resident defendant for a transitory action occurring beyond the boundaries of the state, cases involving such suits cannot be located under any recognized key number, but are only disclosed by a combing of the books. It is our firm belief, however, that hundreds of such actions have been tried in New Jersey in cases which never went up on appeal and are accordingly unreported. In passing we may suggest that many such actions against foreign corporations may be found and that, a fortiori, if acceptable against foreign corporations they would be acceptable against domestic corporations. We cite herewith a few cases combed from the books illustrative of the acceptance by New Jersey courts of this type of action.

Siegel v. *Saunders,* 115 N.J.L. 539, 181 Atl. 48 (E. & A. 1935). This was a suit by a resident plaintiff against a resident defendant, arising out of an accident occurring in Virginia.

Harber v. *Graham,* 105 N.J.L. 213, 143 Atl. 340. (E. & A. 1928). This was a suit by a New Jersey resident against a New Jersey resident for a tort arising in Massachusetts.

D.L.&W.R.R. v. *North Jersey Co.,* 65 N.J.L. 524, 47 Atl. 471 (S. C. 1900). This was an action by a non-resident plaintiff against a resident defendant for a cause of action arising in New York.

Emele v. *Arrow Carrier Corporation,* 7 N.J. Misc. 625, 146 Atl. 790 (S. C. 1929—not officially reported). This was a suit by non-resident plaintiffs against a domestic corporation for a cause of action arising in Pennsylvania.

Masci v. Young, 109 N.J.L. 453, 162 Atl. 623, (E. & A. 1932). This is an action by a non-resident plaintiff against a resident defendant, for a tort occurring in the State of New York.

Noro v. *Rau,* 107 N.J.L. 479, 154 Atl. 766, (E. & A. 1931). This is a New Jersey action based upon a Pennsylvania tort, citizenship of plaintiff not disclosed by the opinion.

Martin v. *Lehigh Valley,* 114 N.J.L. 243, 176 Atl. 665 (E. & A. 1935). This is an action based upon a tort occurring in the State of Pennsylvania, brought by a resident of the State of Pennsylvania (Citizenship of defendant not given) in which the Court said:

> "It has repeatedly been held that such a resident has the right to prosecute such a suit."

Giardini v. *McAdoo,* 93 N.J.L. 138, 107 Atl. 437 (E. & A. 1919). This was an action by a resident of the State of New Jersey against the Director General of Railroads, based upon the death of plaintiff's intestate in the State of Pennsylvania.

Friedman v. *Greenberg,* 110 N.J.L. 462, 166 Atl. 119 (E. & A. 1933). This is an action arising out of a tort occurring in the State of New York. Plaintiff was an unmarried daughter of the deceased, the circumstances indicating that this is a case representing a suit by a citizen of New Jersey against a citizen of New Jersey.

There would appear to be but one case in which the application of the doctrine of *forum non conveniens* has ever been passed upon by the Appellate Courts of New Jersey, in which a dismissal of the complaint has resulted. This is the case of *Carnegie* v. *Laughlin,* 132 N. J. Eq. 443, 28 Atl. 2nd 506

(E. & A. 1942). This was a chancery action involving the internal affairs of a foreign corporation. In an apparent attempt to give color to the jurisdictional question, Commercial Trust Company of New Jersey, depository of the stock, was added as a party defendant. The Court held that Commercial Trust Company was not a necessary party to the dispute, and accordingly dismissed the complaint and in so doing used the following language:

> "No reason appears why complainant instituted his suit in this court; that is, why he should not seek the relief he desires through the courts of the states in which the defendant Laughlin or General Tung-Oil Co., *are domiciled,* and therefore the bill of complaint will be stricken as to the moving defendant." (Emphasis supplied).

It is to be noted that the moving defendant was Laughlin, a non-resident, and that the bill was stricken as to him, upon the ground that the suit should have been brought against him in his domicile.

It will further be noted that in the case at bar plaintiffs seek to do the very thing which the Courts in the *Carnegie* case says should have been done, namely, to sue the defendant at its domicile.

The other New Jersey case referred to by the New Jersey Supreme Court in its Opinion—which resulted in a dismissal, is *Sielcken* v. *Sorenson,* 111 N. J. Eq. 44, 161 Atl. 47, (Court of Chancery 1932). Vice-Chancellor Backes pointed out that the defendant Sorenson, a resident of New Jersey, was "not a necessary party to this Bill," and that in addition no effective judgment could be rendered for the reason that jurisdiction could not be obtained against Irving Trust Company of New York, and accordingly the Bill was dismissed. Accordingly, the

action was considered merely as a suit by one non-resident against another non-resident, for a partnership accounting of a non-resident partnership, and this is proven by the syllabus prepared by the Court which reads as follows:

> "The Court of Chancery refuses to entertain jurisdiction of actions between citizens of another state, of causes of action which arose in their state, and in which their courts afford adequate relief, unless there is a special reason for the intervention."

We note in passing that every other case cited by the New Jersey Supreme Court in its Opinion is a case in which a non-resident sued a non-resident, and that in each instance the Court refused to dismiss on the basis of *forum non conveniens*.

The conclusion arrived at by the New Jersey Supreme Court that the doctrine announced by this Court in *State of Missouri* v. *Mayfield*, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3 (1950) does not concern the New Jersey Court because the proceeding in that case was under the Federal Employer's Liability Act "which embodies special venue provisions," and seems to us to by-pass the problem with which we are dealing. As we see it, the fact that this Court was dealing with a Federal Employers' Liability case in *State of Missouri* v. *Mayfield*, has nothing at all to do with the philosophy which underlies the Court's decision. This is made plain, not only in the course of the opinion in this case, which indicates that the doctrine of *forum non conveniens* may be applied by a state court in a Federal Employers' Liability case, in the same manner and to the same extent that it may be applied in any other tort action, but also by reason of the fact that this Court had previously passed on this specific problem in the case of *Ex Parte Collett*, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 432 (1949).

It is a truism that actions speak louder than words, and although the New Jersey Supreme Court states that its action is non-discriminatory "and does not turn on considerations of domestic residence or citizenship as against foreign residents or citizenship," the fact is that in the judicial history of this State no case can be pointed to in which the suit of a citizen of the State against a citizen of the State, corporate or otherwise, has ever been dismissed under the doctrine of *forum non conveniens*. As we read *State of Missouri* v. *Mayfield, supra,* this is the test, and statements to the effect that no discrimination is being practiced cannot overcome the judicial history of the State which makes patent that the first time this extraordinary doctrine has ever been applied was in the case of a non-citizen.

At this point we should, perhaps, again allude to the fact that the research of counsel on both sides has failed to disclose any case in the judicial history of the forty-eight states in which the doctrine of *forum non conveniens* has ever been upheld in favor of a citizen of the forum.

Indeed, substantially the only case in any State court in which *forum non conveniens* has been applied where either of the parties was a citizen of the forum, is the case of *Universal Adjustment Corp.* v. *Midland Bank,* 281 Mass. 303, 184 N. E. 152 (Sup. Jud. Ct. 1933), where the Massachusetts court had under consideration an action by an assignee of a Russian bank, seeking to recover a certain bank deposit in an English bank. The assignee, Universal Adjustment Corporation, was a Massachusetts corporation, and the Massachusetts court in refusing to take cognizance of the action, despite the fact that the plaintiff was a Massachusetts corporation, pointed out that the plaintiff took its cause of action by assignment from a non-resident third person,

"and the privilege of maintaining a cause of action acquired by assignment is hedged with limitations. The necessary result is that the question of the right of the court of this Commonwealth to assume or decline jurisdiction is to be decided on the footing that the cause of action stands the same *as if brought by one foreign corporation against another foreign corporation.*" (Emphasis supplied.)

To restate our position, we maintain that a survey of the judicial history of the State of New Jersey disclosed no case in which access to its courts has been denied to a citizen of New Jersey (or, indeed, to a non-citizen) seeking recovery against a citizen of New Jersey for a tort committed beyond the boundaries of the State.

We assert that to introduce this new doctrine involving a dismissal of the action applied in favor of a citizen of the forum and against a citizen of the State of Alabama is on its face discriminatory.

We urge, further, that the doctrine of *forum non conveniens* as such has been consistently applied only to actions by non-citizens against non-citizens, and cannot properly be raised in favor of a citizen of the forum, certainly under circumstances indicating discrimination, against a citizen of a sister state in violation of the privileges and immunities clause, and denying to that citizen the equal protection of the law.

We quite willingly concede that under *Chambers* v. *B. & O. R. R.*, 207 U. S. 142, 52 L. Ed. 143, and the *Mayfield* case, *supra*, a state is at liberty to accept or to reject the doctrine of *forum non conveniens*, provided no discrimination is practiced.

We dispute, however, that the Court is here applying that doctrine for, as we again repeat, no case can be found,

so far as we are aware, in the reported decisions of the forty-eight states since the first thirteen colonies became states in 1776, in which any court has ever said that it had a discretionary power to dismiss a plaintiff's cause of action brought against a defendant who was a citizen of the forum.

In other words, we say that whatever be the doctrine which the New Jersey Supreme Court has applied in dismissing the instant case, it is not the doctrine of *forum non conveniens,* and in this connection we would cite the case of *Williams* v. *Green Bay and W.R. Co.,* 326 U. S. 549, 66, S. Ct. 284, 98 L. Ed. 311 (1946), in which this Court said:

> "We mention this phase of the matter to put the rule of forum non conveniens in proper perspective. It was designed as an 'instrument of justice'. Maintenance of a suit *away from the domicile of the defendant*—whether he be a corporation or an individual—might be vexatious or oppressive." (Emphasis ours).

This seems to be the generally accepted definition of the doctrine of *forum non conveniens,* that is to say, that its application arises in instances where a defendant is sued away from its domicile, in a forum which lacks any connecting link with the cause of action. This view is strengthened by the fact that no reported case can be found in the forty-eight states declaring *forum non conveniens* to be a basis for the dismissal of an action in favor of a defendant sued on its own home grounds.

In *Whitney* v. *Madden,* 400 Ill. 185, 79 N. E. 2nd, 593, (1948), the Supreme Court of Illinois had before it a case involving the doctrine, and, in passing on the problem, said:

"Many jurisdictions have added the limitation that if it is apparent that an appropriate forum is available, and the relief sought in the local courts by a *non-resident* against a *non-resident* for a transaction which occurred outside the territorial boundaries of the State, for the purpose of frustrating the defendant, or if the bringing of the action unduly burdens the defendant, or causes him great or unnecessary inconvenience, or unnecessarily burdens the court, the trial court may, in its discretion decline jurisdiction of the case, even though it may have proper jurisdiction over all parties, and the subject matter involved. This is the doctrine of forum non conveniens." (Emphasis supplied).

It is our position that the instant case is not one in which the exercise of jurisdiction rests in discretion guided by the principles of comity. The plaintiffs sue in the courts of New Jersey, not as a matter of grace, but as a matter of right, and under the protection of the Federal Constitution, and the doctrine of *forum non conveniens* was never intended to be and is not applicable to the situation here presented, and this has been a matter of almost universal recognition.

In the case of *James H. Rhodes & Co.* v. *Chausovsky,* cited by the New Jersey Supreme Court, Appendix, the editorial writers of West Publishing Company have summarized the syllabus prepared by the New Jersey Court as follows:

"The doctrine of forum non conveniens is one of convenience and expediency, rather than rule of jurisdiction, and regulates exercise of jurisdiction in transitory actions, between non-residents by considerations of convenience and essential justice."

Similarly in *Thistel* v. *Halstead,* 95 N. H. 87, 58 Atl. 2nd 503 (S. C. of N.H. 1948) the syllabus prepared by this organization reads as follows:

> "The doctrine of forum non conveniens, justifying dismissal of action of which court has jurisdiction, is designed as instrument of justice to be employed *only* where maintenance of suit *away from defendant's domicil* might be vexatious or oppressive by imposing actual hardship." (Emphasis supplied.)

The question was squarely dealt with in *Virgil* v. *Cayuga,* 54 N.Y.S. 2nd, 94, aff'd. by the Appellate Division 55 N.Y.S. 2nd 909, 185 Misc. 680 (1945), where the court said:

> "The plea of forum non conveniens cannot be presented by a resident of the forum."

Your petitioners claim an absolute right under the Federal Constitution to institute their action in the Courts of New Jersey, and contend that the decision by the New Jersey Supreme Court raises an important Federal question, which has not been directly decided, but which should be decided by this Court, and that the decision of the New Jersey Supreme Court is probably not in accord with applicable decisions of this Court, such as *State of Missouri* v. *Mayfield, supra,* and *Chambers* v. *B.&.O.R.R., supra.*

Respectfully submitted,

DAVID ROSKEIN,
Attorney for Petitioner.

JOHN A. LAIRD, and
EDWIN BROBSTON,
Of Counsel.

APPENDIX

I

SUPREME COURT OF NEW JERSEY

No. A-117, September Term, 1953

BERTHA GORE AND HUBERT A. GORE, AND REGINALD GORE, infants, by their Guardian Ad Litem, Bertha Gore,
Plaintiffs-Respondents,

vs.

UNITED STATES STEEL CORPORATION,
Defendant-Appellant.

Argued March 22, 1954; decided

Mr. Burtis S. Horner argued the cause for the appellant (Messrs. Stryker, Tams & Horner, *Attorneys*).

Mr. John A. Laird argued the cause for the respondents (Messrs. Roskein & Laird, *Attorneys*).

The opinion of the Court was delivered by
JACOBS, J.

The defendant moved to dismiss the plaintiffs' action under the doctrine of *forum non conveniens*. The Law Division denied the motion and the Appellate Division granted leave to appeal under R. R. 2:2-3(b). We certified upon our own motion.

The defendant United States Steel Corporation is incorporated in New Jersey but does business throughout the country. One of its branches, known as the Tennessee Coal & Iron Division, operates the Fairfield Tin Mill at Fairfield, Alabama. On August 10, 1952, the decedent Hubert Gore was at the Tin Mill as an employee of Nick & Hendon, independent painting contractors engaged in doing work at the defendant's premises in Alabama, and allegedly suffered injuries which resulted in his death. On June 27, 1953, the plaintiffs, being the decedent's dependents, widow and children resident in Alabama, filed their complaint in the New Jersey Superior Court, Law Division, Hudson County, alleging that (1) the decedent and his employer were covered by the Workmen's Compensation Act of Alabama; (2) the decedent was an invitee and the defendant was under a duty of furnishing him with a reasonably safe place to work; (3) the defendant negligently allowed on the premises an uninsulated wire which burned and shocked the decedent and caused his death; and claiming damages in the sum of $100,000 in their action for wrongful death under "a statute of the State of Alabama permitting such action, being Title 7, Section 123, The Code of Alabama." An amendment to the complaint set forth that their action for wrongful death was brought under the aforementioned statute "as modified by Title 26, Section 312 of said Code, which transfers said cause of action for wrongful death under said Homicide Act from the personal representative of the deceased to the actual dependents of said deceased."

In due time the defendant filed its motion to dismiss setting forth that (1) the plaintiffs are residents of Alabama, (2) the defendant is subject to process in Alabama, (3) the accident out of which the cause of action arose occurred in Alabama, (4) the liability alleged and the remedy sought are based upon an interpretation of the laws of Alabama, (5) all of the witnesses

are residents of Alabama and while subject to subpoena in Alabama are not answerable to process in New Jersey, (6) the expense to the parties and the witnesses' inconvenience and loss of time will be burdensome and substantially heavier if the case is tried in New Jersey rather than in Alabama, and (7) the action is one in which the doctrine of *forum non conveniens* should be applied. The affidavits supporting the motion set forth that the distance from Fairfield, Ala., to Jersey City, New Jersey is approximately 980 miles; the defendant's witnesses will include supervisory and other employees who work at its Alabama plant; the accident occurred at Fairfield, Alabama and all of the witnesses including those not in the defendant's employ live in and about Fairfield and are subject to subpoena in Alabama but not in New Jersey; Alabama juries in tort cases are "at times allowed and at times required to view the site of an accident"; the case involves an interpretation "of certain Alabama statutes and law which are constantly being considered" by Alabama courts; the statute of limitations has not run against an action in Alabama by the personal representative of the deceased; and the case if instituted in Alabama would probably be reached for trial within six months. The affidavit in opposition to the motion was executed by an Alabama attorney for the plaintiffs. He asserted that the average verdict in the "State and Federal Courts for death actions in Jefferson County Alabama would not exceed $10,000 and that he knew "of no verdict in the State of Alabama in excess of $10,000 for any colored decedent"; apparently the decedent in the instant matter was colored. He stated further that "it is recognized generally among attorneys at the Bar in Alabama that juries generally are much more conservative in awards for colored claimants than white claimants, and this prevails particularly in death actions." He expressed the view that the plaintiffs' action was under the Workmen's Compensation Law of Alabama and not under the

Alabama Homicide Act and that the one-year period of limitation in the Compensation Law was applicable.

On October 28, 1953 the Law Division denied the motion to dismiss but directed the plaintiffs to file an amended complaint "making more definite and certain" the Alabama statute or statutes upon which they grounded their right to relief. On November 25, 1953 an order granting leave to appeal was entered by the Appellate Division; this order contained a provision to the effect that the defendant had agreed that if the New Jersey action is dismissed and an Alabama action is instituted within three months thereafter it will not raise any applicable one-year statute of limitations as a defense. Before this Court, the defendant's position has been that the wrongful death action may still properly be instituted in Alabama within two years of August 10, 1952; in any event, it has renewed its waiver of the limitation defense as embodied in the Appellate Division's order. In support of the determination below the plaintiffs urge (1) that they have an absolute right, guaranteed by the privileges and immunities clauses of the federal constitution, to maintain their action in New Jersey and (2) that the trial judge properly exercised his discretion in refusing to dismiss the proceedings on the ground that Alabama would be a more convenient forum.

Under the doctrine of *forum non conveniens* a court may decline jurisdiction where there is available another forum where trial will best serve the convenience of the parties and the ends of Justice. *Koster* v. *American Lumbermen's Mutual Cas Co.*, 330 U. S. 518, 527, 67 S. Ct. 828, 91 L. ed. 1067, 1076 (1947); *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 507, 67 S. Ct. 839, 91 L. ed. 1055, 1062 (1947). Its origins are somewhat obscure although the term itself appeared early in Scottish practice where the courts declined to hear cases when justice

dictated that the parties avail themselves of other forums. See *Barrett, The Doctrine of Forum Non Conveniens,* 35 Calif. L. Rev. 380, 386 (1947); *Braucher, The Inconveniens Federal Forum,* 60 Harv. L. Rev. 908, 909 (1947). In 1929 Paxton Blair collected many decisions indicating that it had in one form or other been applied in many American courts. See *Blair, The Doctrine of Forum Non Conveniens in Anglo-American Law,* 29 Col. L. Rev. 1 (1929). And in 1941 Justice Frankfurter referred to it as a familiar doctrine under which a court having jurisdiction may decline to entertain an action "that in justice should be tried elsewhere" and as a firmly embedded manifestation of a "civilized judicial system." See *Baltimore & Ohio R. Co. v. Kepner,* 314 U. S. 44, 55, 62 S. Ct. 6, 11, 86 L. ed. 28, 34 (1941).

In the recent *Gilbert* and *Koster* cases, *supra,* the United States Supreme Court had occasion to apply the doctrine and express the major considerations underlying its exercise. In the *Gilbert* case a Virginia resident sued a Pennsylvania corporation in the United States District Court for the Southern District of New York for loss resulting from the defendant's negligence in delivering gasoline to his warehouse tanks and pumps in Virginia. The District Court dismissed under the doctrine of *forum non conveniens* and its action was sustained by the Supreme Court. In the course of his persuasive opinion for the Supreme Court Justice Jackson said (330 U. S. 501, 67 S. Ct. 843):

> "Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the en-

forcibility of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex', 'harass' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

"Factors of public interest also have place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle the problems in conflict of laws, and in law foreign to itself."

In the *Koster* case a derivative action was brought by a New York resident in the United States District Court for the Eastern District of New York against an Illinois Insurance company and other Illinois defendants. 64 F. Supp. 595. Notwithstanding the plaintiff's New York residence the Supreme Court maintained the dismissal of the action as having been brought in an inconvenient forum. It stated the dispositive consideration to be "where trial will best serve the convenience of the parties and the ends of justice" (330 U. S. 518, 67 S. Ct. 833), and pointed out that under modern conditions corporations are often incorporated in states other than those where their main business is conducted and that under such circumstances the corporate domicil is entitled to little weight under the conven-

ient forum doctrine "which resists formalization and looks to the realities that make for doing justice." Similarly, in *Universal Adjustment Corp.* v. *Midland Bank*, 281 Mass. 303, 315, 184 N. E. 152, 158, 159, 87 A.L.R. 1407 (Sup. Ct. Jud. 1933), the Massachusetts Court declined to entertain an action by a Massachusetts corporation as assignee of money deposited by a Russian bank in an English bank over which jurisdiction was obtained by trustee writ. The Court, through Chief Justice Rugg, expressing the controlling principle to be that "where in a broad sense the ends of justice strongly indicate that the controversy may be more suitably tried elsewhere, then jurisdiction should be declined and the parties relegated to relief to be sought in another forum." It referred to the many decisions in which courts have refused to take jurisdiction of actions involving the internal affairs of foreign corporations as but a specific application of the same principle and as showing that "domestic residence of parties is not decisive in requiring courts to assume jurisdiction of a cause, but that the basis of inquiry will be whether justice can be as well done here as in another jurisdiction to which parties may have access." The New Jersey cases on the subject suggest an approach similar to that taken in the cited authorities. See *Carnegie* v. *Laughlin*, 132 N. J. Eq. 443 [28 A. 2d. 506] (E. & A. 1942); *Sielcken* v. *Sorenson*, 111 N.J. Eq. 44 [161 A. 47] (Ch. 1932). *Cf. Weed* v. *Smith*, 15 N. J. Super. 250 (App. Div. 1951); *James H. Rhodes & Co.* v. *Chausovsky*, 137 N.J.L. 459 [60 A. 2d. 623] (Sup. Ct. 1948); *Quigley Co., Inc.* v. *Asbestos Limited, Inc.*, 134 N. J. Eq. 312 [35 A. 2d. 452] (Ch. 1944), aff'd., 135 N. J. Eq. 460 [39 A. 2d. 135] (E.&.A. 1944); *Standard Surety & Co.* v. *Caravel Industries Corp.*, 128 N. J. Eq. 104 [15 A. 2d. 258] (Ch. 1940); *Kantakevich* v. *D. L. & W. R. R. Co.* [10 A. 2d. 651] 18 N. J. Misc. 77 (Cir. Ct. 1940); *Anderson* v. *D. L. & W. R. R. Co.*, [11 A. 2d. 607] 18 N. J. Misc. 153 (Cir. Ct. 1940).

In the *Sielcken* case, *supra,* a bill of complaint for a partnership accounting was filed in the New Jersey Court of Chancery. The partnership was a New York concern, the complainant was a resident of New York and all of the defendants except Sorensen were residents of New York. Sorensen was a resident of New Jersey and was a proper though not a necessary party defendant. Vice Chancellor Backes dismissed the proceeding on the ground that New York was the more convenient forum. In the *Carnegie* case, *supra,* the plaintiff filed a bill of complaint in the New Jersey Court of Chancery charging that the defendant Laughlin had failed to perform the terms of a voting trust agreement which concerned shares of stock in General Tung Oil Co., a Delaware corporation. The complainant and the defendant Laughlin were nonresidents but another proper defendant, the Commercial Trust Company of New Jersey, custodian of the shares of stock, was a New Jersey corporation and the voting trust agreement stipulated that it should be governed by the laws of New Jersey. Vice Chancellor Fielder dismissed the proceeding, pointing out that no reason appeared for the plaintiff's institution of his action in New Jersey rather than in the states where Laughlin and General Tung Oil Co. were domiciled. The Court of Errors and Appeals affirmed the dismissal on the opinion of the Vice Chancellor. In the *Kantakevick* case, *supra,* the Circuit Court declined to dismiss a negligence action, though the parties were residents of Pennsylvania and the cause of action arose in that state, on the ground that the inconveniences advanced were not sufficiently weighty to disturb the plaintiff's choice of forum; however, in the course of its opinion the court suggested that reasons for declining jurisdiction "might be successfully advanced in cases between citizens of our state" (10 A. 2d. 653, 18 N. J. Misc. 77) and expressed the broad view that "where the ends of justice clearly indicate that if a controversy tried in this state would result in an unfair burden upon and disadvantage to citizens of

this state or that the controversy may be more suitably tried and the remedy more complete in another forum, then the parties should be relegated to that forum."

In 1948 Congress revised Title 28 of the United States Code and provided in part (28 U. S. C. A. Sec. 1404(a)) that "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The reviser's note states that the provision "was drafted in accordance with the doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though venue is proper." On the other hand, Judge Goodrich has pointed out that the doctrine is "quite different" (*All States Freight, Inc.* v. *Modarelli*, 196 F. 2d 1010, 1011 (C.C.A. 3 1952) since it involves a dismissal, or perhaps a stay, rather than a transfer as provided in Sec. 1404(a). But *cf. Maloney* v. *New York N. H. & H. R. Co.*, 88 F. Supp. 568 (D.C.N.Y. 1949). In any event it is significant that Sec. 1404(a) has been freely applied though a resident plaintiff or a resident defendant was a party to the litigation. See *General Felt Products Co.* v. *Allen Industries, Inc.*, [120] F. Supp [491] (D.C.Del. 1954); *Duffy* v. *United States*, 114 F. Supp. 881 (D.C.N.Y. 1953); *Nicol* v. *J. C. Penney Co.*, 97 F. Supp. 83 (D.C. Mich. 1951); *Kasper* v. *Union Pac. R. Co.*, 97 F. Supp. 275 (D. C. Pa. 1951); *Hansen* v. *Nash-Finch Co.*, 89 F. Supp. 108 (D.C. Minn. 1950). In *B. Heller & Co.* v. *Perry*, 201 F. 2d 525, 527, C.C.A. 7, 1953) merchandise being carried by the defendant railroads was lost as the result of a sudden flood at Kansas City, Kansas. The thirty or more material witnesses resided in the Kansas City community and could not be compelled to attend trial in Illinois. Nevertheless the plaintiffs sued the railroads in the United States District Court for the Northern District of Illinois. The District Judge transferred the proceedings to the Kansas district, and his action was sus-

tained by the Court of Appeals; it is worthy of note that the court's opinion does not even refer to the residence of the parties but stresses that the flood occurred in Kansas City, the numerous witnesses and documents were in that community, and "no controverted question depended upon any event occurring in the Northern District of Illinois; both parties must rely upon evidence of events wholly removed from that district."

It is now well recognized that the dismissal of a non-resident's action under principles of *forum non conveniens* in nowise violates the privileges and immunities clauses of the federal constitution. See *Kantakevich* v. *Delaware L. & W. R. R. Co., supra,* 10 A. 2d 651, 18 N. J. Misc. at p. 79; *Barrett, supra,* at p. 402; *Braucher, supra,* at p. 914; *Blair, supra,* at p. 6. In *Douglas* v. *New York, N. H. & H. R. Co.,* 279 U. S. 377, 49 S. Ct. 355, 73 L. ed. 747 (1929) a Connecticut citizen and resident brought an action under the Federal Employers' Liability Act in New York against a Connecticut corporation for injuries sustained in Connecticut. The trial court dismissed the action as having been brought in an inconvenient forum and this was sustained by the United States Supreme Court. In the course of his opinion for the Court, Justice Holmes distinguished between citizens and residents and pointed out that there was "no discrimination between citizens as such, and none between non-residents with regard to these foreign causes of action" and that "there are manifest reasons for preferring residents in access to often overcrowded courts, both in convenience and in the fact that, broadly speaking, it is they who pay for maintaining the courts concerned." The distinction made between state residents and citizens has been termed unrealistic and it has been suggested that the Supreme Court's holding may be rested on the ground that fair and reasonable discriminations in favor of the use of local state courts by local state residents or citizens

do not run counter to any constitutional inhibitions." See *Barrett, supra,* at p. 392.

However, the doctrine, as we construe it, is non-discriminatory and does not turn on considerations of domestic residence or citizenship as against foreign residence or citizenship. It turns, rather, on considerations of convenience and justice and it may, therefore, be applied for and against domestic residents and citizens as well as for and against foreign residents and citizens. It is true that under the doctrine an action by or against a resident will ordinarily not be dismissed as being in an inconvenient forum but it is also true that ordinarily an action by or against a nonresident will not be dismissed as such. It is only in those exceptional cases where a weighing of all of the many relevant factors, of which residence is but part decisively establishes that there is available another forum where trial will best serve the convenience of the parties and the ends of justice, that the doctrine is ever invoked. Under this approach the plaintiffs' first contention that they have an absolute right, guaranteed by the privileges and immunities clauses of the federal constitution, to maintain their action in a New Jersey court against the defendant corporation of New Jersey is without any semblance of basis and must be rejected. Although the plaintiffs have placed reliance on cases such as *Schultz* v. *Union Pacific R. Co.* 118 Cal. App. 2d. 169, 257 Pac. 2d 1003 (Cal. Ct. App. 1953) and *State* v. *Mayfield,* 362 Mo. 101, 240 S. W. 2d 106 (1951), *cert. denied,* 342 U. S. 871, 72 S. Ct. 107, 96 L. ed. 655 (1951), it is sufficient to point out that they dealt only with the issue of whether a state court is at liberty to decline jurisdiction of a proceeding under the Federal Employers' Liability Act 45 U. S. C. A., Sec. 51, *et. seq.* which embodies special venue provisions. In the instant matter we are in nowise concerned with that question although in *State of Missouri* v. *Mayfield,* 340 U. S. 1, 71 S. Ct. 1, 95 L. ed. 3

(1950) the Supreme Court indicated that *forum non conveniens* may be applied by a state court even in a proceeding under the Federal Employers' Liability Act so long as the policy is administered impartially and without discrimination. *Cf.* Frankfurter, J. in *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379, 73 S. Ct. 749, 97 L. ed. 1094, 1103 (1953).

We come now to the plaintiffs' second contention, namely, that the trial judge properly exercised his discretion in refusing to dismiss the proceedings on the ground that Alabama would be a more convenient forum. New Jersey has no real connection with the controversy although the defendant is a New Jersey corporation. It is undisputed that in Alabama the defendant is fully amenable to service and the satisfaction of any judgment obtained against it. The plaintiffs are residents of Alabama and the cause of action arose there in a plant operated by the defendant as a complete and wholly separate division of its far-flung activities. All of the witnesses for the plaintiffs as well as the defendant are there and they can be subpoenaed for trial there but not in New Jersey. The jury view can be taken in Alabama but not in New Jersey. The briefs before us suggest various questions of Alabama law, statutory and otherwise, which will be presented at the trial and may more readily be passed upon by an Alabama court. The distance between Alabama and New Jersey is substantial and the expense and inconvenience of having a New Jersey rather than an Alabama trial would burden all of the parties and their witnesses. It seems clear that the foregoing considerations point decisively to trial in Alabama where a local judge and jury would be best suited to pass on the local incident and controversy presented.

Notwithstanding the intimations by the plaintiffs to the contrary, we assume that the Alabama judicial system is fully equipped to insure their fair and equal treatment at the hands of a local judge and jury. *Cf. Gulf Oil Corp.* v. *Gilbert, supra.*

The plaintiffs' motivating reason for selecting New Jersey rather than Alabama for the institution of their action was the expectation of receiving a substantially higher verdict. It may well be that plaintiffs' verdicts in metropolitan areas where average income and living costs exceed those elsewhere will generally be greater. But decent judicial administration could not tolerate that as a persuasive or even legitimate reason for brudening metropolitan communities with litigious controversies which arose elsewhere and should in all justice be tried there. Any opposing view would open our courts to extensive litigation which would deal exclusively with foreign issues and would necessarily retard the expeditious determination of local issues. That the danger is not unreal may be gathered from the discussion in *Harrett, supra,* at p. 383 where reference is made to a Chicago, Illinois attorney who, in the course of a single year, filed one hundred actions against railroads for nonresident plaintiffs on foreign claims for injuries which occurred in Arizona, California, New Mexico and elsewhere. In the *Gilbert* and *Koster* cases, *supra,* the Supreme Court met the problem forthrightly in opinions which, after fairly setting forth the controlling criteria, sustained dismissals of pending federal actions on the ground that they had been brought in inconvenient forums and shortly thereafter Congress enacted Sec. 1404(a) which vested broad power in the federal courts to transfer causes to more convenient districts. The federal trend in favor of the use of considerations of *forum non conveniens* seems to us to be a wholesome one and in furtherance of the sound administration of justice. State courts should not hesitate to follow it in appropriate circumstances. In the instant matter we consider the undisputed facts to be entirely compelling; the plaintiffs should justly have instituted their action in a court sitting in Alabama and we find no proper reason for their having chosen or being permitted to remain in this forum.

The plaintiffs contend that since they instituted their New Jersey action the one-year limitation in the Alabama Workmen's Compensation Act has barred further claim in Alabama. That limitation, however, appears to deal with compensation payable by the employer and to be inapplicable to a wrongful death claim against a third party. We accept the position advanced by the defendant that action on such claim is subject to the two-year period embodied in the Alabama Homicide or Wrongful Death Act, which has not run and that, in all events, any pertinent one-year limitation has been effectively waived in accordance with the agreement embodied in the order of the Appellate Division. We see no danger to the plaintiffs on the ground of limitation if proper action is forthwith instituted in Alabama; and to furnish complete assurance on this score we point out that if, perchance, any prejudicial error should later appear with respect to the effectiveness of the defendant's waiver of limitation, relief in our state will undoubtedly be made available under R. R. 4: 62-2. *Cf. Johnson & Johnson* v. *Weissbard*, 11 N. J. 552, 555 95 A. 2d. 403 (1953); *Klapprott* v. *United States*, 335 U. S. 601, 613, 69 S. Ct. 384, 93 L. Ed. 266, 276 (1949), *judgment modified*, 336 U. S. 942, 69 S. Ct. 398, 93 L. ed. 1099 (1949), motion to clarify denied, 336 U. S. 949, 69 S. Ct. 877, 93 L. ed. 1105 (1949).

The order entered in the Law Division is reversed with direction that the amended complaint be dismissed, without costs.

A true copy:
JOHN H. GILDEA
Clerk.

[FOR REVERSAL: Chief Justice Vanderbilt and Justices Oliphant, Wachenfeld, Burling and Jacobs—5.]

[FOR AFFIRMANCE: Justices Heher, Brennan—2.]

SEP 27 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 252.

BERTHA GORE and HUBERT A. GORE, and REGINALD GORE, infants, by their Guardian *ad Litem*, Bertha Gore,
Petitioners,

vs.

UNITED STATES STEEL CORPORATION,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOSIAH STRYKER,
744 Broad Street,
Newark 2, New Jersey,
Counsel for Respondent.

On Brief:
BURTIS S. HORNER.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 252.

BERTHA GORE and HUBERT A. GORE, and REGINALD GORE, infants, by their Guardian *ad Litem*, Bertha Gore,

Petitioners,

vs.

UNITED STATES STEEL CORPORATION,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinion of the Court Below.

The opinion of the Supreme Court of New Jersey, which is printed in the appendix to the petition, is reported in 15 N. J. 301, 104 A. 2d 670. No opinion was filed by the Superior Court, Law Division.

Statement of Jurisdiction.

The judgment of the New Jersey Supreme Court was dated and entered May 3, 1954. The jurisdiction of this Court in invoked under Section 1257 (3) of Title 28 of the United States Code (28 U. S. C. A. §1257 (3)).

In the petition (Pet. p. 14) the reasons advanced for the allowance of a Writ of Certiorari are as follows:

1. The New Jersey Supreme Court in applying the doctrine of *forum non conveniens* and dismissing the complaint filed by petitioners has raised an important Federal question which has not been decided by this Court.

2. The New Jersey Supreme Court has applied the *forum non conveniens* doctrine in a way probably not in accord with the applicable decisions of this Court.

The Question Presented for Review.

Do the Privileges-and-Immunities Clauses of the United States Constitution guarantee a non-resident of New Jersey an absolute right to bring and maintain a foreign transitory cause of action against a New Jersey resident in New Jersey despite any inconvenience that such defendant might sustain by having to defend such action in New Jersey?

Statement of the Case.

This is a wrongful death action brought in New Jersey by certain Alabama residents under the Alabama Wrongful Death Act, as modified by Title 26, Section 312 of the Alabama Code, to recover damages for the alleged wrongful death of their decedent (Amended Complaint, Par. 7, R4a). Petitioners are Alabama residents and citizens, as was their decedent. The accident allegedly giving rise to this cause of action occurred in Fairfield, Alabama, on or about August 10, 1952. At the time of the accident the decedent was engaged in the performance of certain work upon the

respondent's premises while in the employ of an independent contractor, Nick & Hendon (Amended Complaint, Par. 2, R2a). The decedent and his employer were subject to and covered by the Alabama Workmen's Compensation Law at the time of the decedent's death (Amended Complaint, Par. 3, R2a).

All of the respondent's witnesses are Alabama residents, and some of them are engaged in important supervisory work (Affidavit of A. V. Wiebel, Par. 5, R7a). The expense of transporting the respondent's witnesses some 980 miles to Jersey City and providing accommodations for them in New Jersey would be substantial, as would be the loss in man-hours of work (Affidavit of A. V. Wiebel, Par. 8, R7a). The respondent could not compel the attendance of non-employee witnesses by subpoena in New Jersey and thus would be prejudiced in its defense of the action if it were tried in New Jersey. Although the respondent is a New Jersey corporation it is qualified to do business in Alabama and is amenable to service of process in that state (Affidavit of James R. Forman, Jr., Par. 6, R9a).

On October 2, 1953, the respondent made a motion to dismiss the action on the ground of *forum non conveniens*. Respondent's motion was denied on October 28, 1953, by an order signed by a Judge of the Superior Court, Law Division. Said order required petitioners to file and serve on or before November 15, 1953, an amended complaint making more definite and certain as respects the statute or statutes of the State of Alabama upon which they ground their right to relief (R14a). The said order was filed with the Clerk of the Superior Court on November 12, 1953.

An amended complaint was filed on November 14, 1953 (R2a). On November 13, 1953 the respondent filed a notice of motion for leave to appeal to the Appellate Division of the Superior Court from the order entered by the Law Divi-

sion (R15a). On November 25, 1953 a judge of the Appellate Division signed an order granting respondent's motion for leave to appeal (R20a). The said order states that the attorneys for the respondent agreed in the presence of the court that if the appeal authorized by said order is determined in favor of the respondent, and that if an action is instituted by the petitioners in the courts of Alabama within three months from the date of entry of an order of dismissal, the respondent will not raise as a defense in such action in Alabama any applicable one-year statute of limitations (R21a). The said order was filed with the Clerk of the Superior Court on December 1, 1953. On December 5, 1953, the respondent filed with the said Clerk a Notice of Appeal (R1a).

Thereafter, the New Jersey Supreme Court certified the case on its own motion. Said court reversed the order of the Law Division and ordered the action dismissed on the ground of *forum non conveniens*. The judgment of the New Jersey Supreme Court was filed May 3, 1954. On August 2, 1954, petitioners filed their Petition for Writ of Certiorari with this Court.

ARGUMENT.

Petitioners have no absolute right to maintain the instant action in New Jersey.

Petitioners contend that certiorari should be granted under the provisions of Rule 19-1(a) of this Court because the New Jersey Supreme Court has decided a federal question not heretofore decided by this Court and in a way probably not in accord with applicable decisions of this Court (Pet., p. 14). Specifically, petitioners assert that the New Jersey Supreme Court has improperly held that

the Privileges-and-Immunities Clauses of Article 4, Section 2 and of the Fourteenth Amendment of the United States Constitution do not guarantee petitioners an absolute right to bring and maintain the present action in New Jersey. We respectfully submit that petitioners' contentions are without merit for the reasons hereinafter stated.

The applicable decisions of this Court demonstrate that a state court may, consistent with the aforesaid Privileges-and-Immunities Clauses, apply the *forum non conveniens* doctrine in actions brought by a non-resident of the forum, as in the case at bar. Said decisions further demonstrate that the only requirement of said Clauses is that the said doctrine must be applicable to both actions brought by citizens of the forum and to actions brought by citizens of other states.

In *Chambers* v. *Baltimore & Ohio R. R.*, 207 U. S. 142 (1907), cited by petitioners at pages 11 and 14 of their petition, the plaintiff-widow, a citizen of Pennsylvania, brought an action in Ohio to recover for the death of her husband who at the time of his death was also a Pennsylvania citizen. The decedent was injured and died in Pennsylvania. Recovery was sought under the Pennsylvania Death Act. An Ohio statute provided that an action for wrongful death occurring in another state could be enforced in Ohio only if the decedent were a citizen of Ohio. This Court held that the Ohio statute did not violate the Privileges-and-Immunities Clause of Article 4, Section 2 of the United States Constitution, saying at pages 148-149:

> "In the decision of the merits of the case there are some fundamental principles which are of controlling effect. The right to sue and defend in the courts is the alternative of force. In an organized society is it the right conservative of all other rights, and lies at the foundation of orderly government. It

is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States, but is granted and protected by the Federal Constitution. • • •

"But, subject to the restrictions of the Federal Constitution, the State may determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them. The state policy decides whether and to what extent the State will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions. Different States may have different policies and the same State may have different policies at different times. But any policy the State may choose to adopt must operate in the same way on its own citizens and those of other States. The privileges which it affords to one class it must afford to the other. Any law by which privileges to begin actions in the courts are given to its own citizens and withheld from the citizens of other States is void, because in conflict with the supreme law of the land."

And at pages 149-150:

"• • • So far as the parties to the litigation are concerned, the State by its laws made no discrimination based on citizenship, and offered precisely the same privileges to citizens of other States which it allowed to its own. There is, therefore, at least a literal conformity with the requirements of the Constitution."

And at page 151:

"• • • She has not been denied access to the Ohio courts because she is not a citizen of that State, but because the cause of action which she presents is not

cognizable in those courts. She would have been denied hearing of the same cause for the same reason if she had been a citizen of Ohio. In excluding her cause of action from the courts the law of Ohio has not been influenced by her citizenship, which is regarded as immaterial. We are unable to see that in this case the plaintiff has been refused any right which the Constitution of the United States confers upon her, * * *''

In *Douglas* v. *New Haven R. Co.*, 279 U. S. 377 (1929) a citizen and resident of Connecticut brought an action in New York under the Employers' Liability Act against a Connecticut corporation doing business in New York to recover for injuries sustained in Connecticut. The trial court dismissed the action holding that it had the discretion to do so under a New York statute providing:

> "An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only; . . . 4. When a foreign corporation is doing business within this State."

This Court, per Mr. Justice Holmes, held that the above quoted New York statute, as interpreted by the trial court did not violate the Privileges-and-Immunities Clause of Article 4, Section 2 of the United States Constitution, saying at page 387:

> "Construed as it has been, and we believe will be construed, the statute applies to citizens of New York as well as to others and puts them on the same footing. There is no discrimination between citizens as such, and none between non-residents with regard to these foreign causes of action. A distinction of privileges according to residence may be based upon rational considerations and has been upheld by this

> Court, emphasizing the difference between citizenship and residence, in *LaTourette* v. *McMaster*, 248 U. S. 465. Followed in *Maxwell* v. *Bugbee*, 250 U. S. 525, 539. * * * There are manifest reasons for preferring residents in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned."

In *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 (1947), in which substantially the same elements of inconvenience were present as exist in the case at bar, a Virginia resident brought a tort action in a United States District Court in New York against a Pennsylvania corporation qualified to do business in New York and Virginia to recover for certain property damage allegedly caused by the defendant's negligence in Virginia. This Court applied the *forum non conveniens* doctrine holding that the trial court had properly dismissed the complaint and remitted the plaintiff to the courts of Virginia. This Court said at page 504:

> "This Court, in one form of words or another, has repeatedly recognized the existence of the power to decline jurisdiction in exceptional circumstances. As formulated by Mr. Justice Brandeis, the rule is:
>
> " 'Obviously, the proposition that a court having jurisdiction must exercise it, is not universally true; else the admiralty court could never decline jurisdiction on the ground that the litigation is between foreigners. Nor is it true of courts administering other systems of our law. Courts of equity and of law also occasionally decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal.' *Canada Malting Co., Ltd.* v. *Paterson Steamships, Ltd.*, 285 U. S. 413, 422-423."

In *Southern R. Co.* v. *Mayfield*, 340 U. S. 1 (1950), cited by petitioners at pages 9, 10, 11 and 14 of the petition, this Court held that a state court may consistently with the Privileges-and-Immunities Clauses apply the doctrine of *forum non conveniens* even in an action brought by a non-resident under the Federal Employers' Liability Act which contains a special venue provision. This Court said at pages 3-4:

> "* * * Missouri cannot allow suits by non-resident Missourians for liability under the Federal Employers' Liability Act arising out of conduct outside that State and discriminatorily deny access to its courts to a non-resident who is a citizen of another State. But if a State chooses to '(prefer) residents in access to often overcrowded Courts' and to deny such access to all non-residents, whether its own citizens or those of other States, it is a choice within its own control. This is true also of actions for personal injuries under the Employers' Liability Act. *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 387. Whether a State makes such a choice is, like its acceptance or rejection of the doctrine of *forum non conveniens*, a question of State law not open to review here."

And at page 5:

> "Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of *forum non conveniens* in these suits according to its own local law. * * *"

We submit that the above cases clearly support the holding of the New Jersey Supreme Court that the Privi-

leges-and-Immunities Clauses *per se* do not guarantee petitioners, as non-residents of New Jersey, an absolute right to bring and maintain the present action in New Jersey. The above cases also dispose of petitioners' contention that this Court has not considered the question of whether said clauses preclude a state court from applying said docrine in an action brought by a non-resident of the forum.

We further submit that the Supreme Court of New Jersey could, consistent with the aforesaid Privileges-and-Immunities Clauses, apply the *forum non conveniens* doctrine in the instant case for in New Jersey said doctrine is applicable to both actions brought by citizens of New Jersey and to actions brought by citizens of other states, as in the case at bar. The following New Jersey decisions demonstrate that the courts of New Jersey will apply said doctrine in both types of actions.

The New Jersey Supreme Court said in the case at bar at 15 N. J. 311:

> "However, the doctrine, as we construe it, is nondiscriminatory and does not turn on considerations of domestic residence or citizenship as against foreign residence or citizenship. It turns, rather, on considerations of convenience and justice and it may, therefore, be applied for and against domestic residents and citizens as well as for and against foreign residents and citizens. It is true that under the doctrine an action by or against a resident will ordinarily not be dismissed as being in an inconvenient forum, but it is also true that ordinarily an action by or against a nonresident will not be dismissed as such. It is only in those exceptional cases where a weighing of all of the many relevant factors, of which residence is but part, decisively establishes that there is available another forum where trial will best serve the convenience of the parties and the

ends of justice, that the doctrine is ever invoked. Under this approach the plaintiffs' first contention that they have an absolute right, guaranteed by the privileges and immunities clauses of the Federal Constitution, to maintain their action in a New Jersey court against the defendant corporation of New Jersey is without any semblance of basis and must be rejected. * * *"

In *Kantakevich* v. *D. L. & W. R. R. Co.*, 18 N. J. Misc. 77, 10 A. 2d 651 (Hudson Cty. Cir. Ct., 1940) the court denied a motion to dismiss a complaint on the ground of inconvenience in a tort action brought by a Pennsylvania resident against a Pennsylvania corporation to recover damages resulting from an accident occurring in that state. The court held that requiring the defendant's witnesses to travel from Scranton to Jersey City would not impose an unreasonable hardship on the defendant. However, the court said at pages 80-81:

"* * * The question of whether a trial court should refuse to exercise its jurisdiction where the reasons are cogent and clear involves more than comity, courtesy or the doctrine of *forum non conveniens. It may involve reasons which might be successfully advanced in cases between citizens of our state in our courts;* an increase of judges and courts necessitated by an excessive influx of foreign litigation from other states and foreign countries attended by an unreasonable burden of expense upon the taxpayers of New Jersey and to the detriment of citizens of our state in having their cases tried; the prevention of vexatious practices in the trial of cases and to leave our trial courts their inherent right to see that justice is fairly administered and to encourage trials to be held in the forum where the remedy is more complete. It involves not only the right of a foreign litigant but also the remedy to be fairly and

> justly controlled. Stated more succinctly where the ends of justice clearly indicate that if a controversy tried in this state would result in an unfair burden upon and disadvantage to citizens of this state or that the controversy may be more suitably tried and the remedy more complete in another forum, then the parties should be relegated to that forum. * * *" (Italics ours.)

In *James H. Rhodes & Co.* v. *Chausovsky,* 137 N. J. L. 459, 60 A. 2d 623 (Sup. Ct., 1948), cited by petitioners at page 13 of the petition, an Illinois corporation brought an action against an Argentine resident for breach of a contract pertaining to the stock subscription of an Argentine corporation. The court declined to apply the doctrine of *forum non conveniens* on the grounds that jurisdiction is rarely declined in actions on contract and that there was no suggestion that the action could be more suitably tried in another jurisdiction. In the case at bar the action is in tort and the defendant has submitted uncontested affidavits that this action could be more suitably tried in Alabama. In the *Rhodes* case the court did not indicate in any way that the citizenship of the parties is a factor in determining the applicability of the *forum non conveniens* doctrine. The syllabus cited by petitioners and prepared by the editorial writers of West Publishing Company is not to be found in the court's opinion. The court's language, which appears at 137 N. J. L. 462, is as follows:

> "* * * The doctrine of *forum non conveniens* is one of convenience and expediency rather than a rule of jurisdiction. It regulates the exercise of jurisdiction in such cases by considerations of convenience and essential justice; and, so measured, there is no ground for declining jurisdiction in the case at hand."

Moreover, the court in the *Rhodes* case at page 462 expressly approved of *Universal Adjustment Corporation* v. *Midland Bank*, 281 Mass. 303, 184 N. E. 152 (Sup. Jud. Ct., 1933) in which the *forum non conveniens* doctrine was applied in an action brought by a resident of the forum.

In the *Universal Adjustment* case a Massachusetts corporation brought an action against an English bank to recover a certain bank deposit in the defendant English bank. The plaintiff was the assignee of a Russian bank. The court affirmed a dismissal of the action on the basis of *forum non conveniens*, saying at page 159:

> "* * * *domestic residence of parties is not decisive in requiring courts to assume jurisdiction of a cause,* but that the basis of inquiry will be whether justice can be as well done here as in another jurisdiction to which parties may have access." (Italics ours.)

We submit that the above authorities and discussion demonstrate that the New Jersey courts have not and will not discriminate between citizens and non-citizens of New Jersey in the application of the *forum non conveniens* doctrine, and that therefore petitioners have not been deprived of any privilege or immunity granted to plaintiffs who are New Jersey citizens and denied to plaintiffs who are citizens of other states.

The New Jersey cases cited by petitioners are not in conflict with the above-cited New Jersey cases. *Hale* v. *Lawrence*, 21 N. J. L. 714 (E. & A., 1848), cited at page 5 of the petition, merely states the aforesaid general rule that citizens of other states are entitled to the same privileges and immunities as citizens of New Jersey. If it is contended that case holds that the doctrine of *forum non conveniens* is not a part of the law of New Jersey it is erroneous as is evident from the above cited New Jersey cases,

including the court below, which have discussed or applied the doctrine. See, also, *Weed* v. *Smith*, 15 N. J. Super. 250, 83 A. 2d 305 (App. Div., 1951).

The New Jersey cases cited on pages 6 and 7 of the petition are wholly inapplicable since in none of those cases did the defendant assert that it had been inconvenienced because an action was brought in New Jersey.

Petitioners' contention that a resident of the forum may not invoke the *forum non conveniens* doctrine has no support in well reasoned decisions, in logic, or in justice. Indeed, in numerous cases actions have been dismissed on the ground of inconvenience despite the fact that either the plaintiff or defendant was a resident of the forum.

For example, in *Koster* v. *Lumbermens Mutual Co.*, 330 U. S. 518 (1947) a derivative action for an accounting was brought in a federal district court in New York by a New York resident against an Illinois corporation qualified to do business in New York and against certain other Illinois residents. This Court sustained a dismissal of the action on *forum non conveniens* grounds, saying at pages 527-528:

> "* * * the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice. Under modern conditions corporations often obtain their charters from states where they no more than maintain an agent to comply with local requirements, while every other activity is conducted far from the chartering state. *Place of corporate domicile in such circumstances might be entitled to little consideration under the doctrine of forum non conveniens,* which resists formalization and looks to the realities that make for doing justice." (Italics ours.)

In *Hansen* v. *Nash-Finch Co.*, 89 F. Supp. 108 (D. Minn., 1950) a North Dakota resident brought an action in Minnesota against a Minnesota corporation to recover for per-

sonal injuries sustained in North Dakota. The court held that North Dakota was a more convenient forum and granted the defendant's motion to transfer the action to that state despite the fact that the action was brought in the domicile of the defendant.

In *Kasper* v. *Union Pac. R. Co.*, 97 F. Supp. 275 (E. D. Pa., 1951), certain Pennsylvania residents brought an action in a Federal court in Pennsylvania under the California law. The court held that California was a more convenient forum and granted the defendant's motion to transfer the action to that state.

While the *Hansen* and *Kasper* cases were decided upon motions for a change of venue, the factors warranting a change of venue are precisely those warranting a dismissal on the ground of *forum non conveniens*. See, *Ex Parte Collett*, 337 U. S. 55, 57-58 (1949), cited by petitioners at page 9 of the petition; *Richer* v. *Chicago, R. I. & P. R. Co.*, 80 F. Supp. 971, 972 (E. D. Mo., 1948); and *Hayes* v. *Chicago, R. I. & P. R. Co.*, 79 F. Supp. 821, 823 (D. Minn., 1948). We, therefore, submit that the *Hansen* and *Kasper* cases are applicable to the case at bar.

In *Sielcken* v. *Sorenson*, 111 N. J. Eq. 44, 161 Atl. 47 (Ch., 1932) a New York resident brought suit for a partnership accounting. The partnership was a New York concern. All of the defendants except Sorenson were New York residents. Sorenson, who was a proper though not a necessary party defendant, was a New Jersey resident. The court dismissed the suit holding that New York was a more convenient forum.

In *Carnegie* v. *Laughlin*, 132 N. J. Eq. 443, 28 A. 2d 506 (E. & A., 1942) a suit was brought alleging that the defendant Laughlin had failed to perform the terms of a voting trust agreement which concerned shares of stock in General Tung Oil Co., a Delaware corporation. Complainant and

defendant Laughlin were non-residents, but the Commercial Trust Company of New Jersey, a proper defendant and the custodian of the shares of stock, was a New Jersey corporation. The court dismissed the suit holding that Delaware was a more convenient forum. We also direct this Court's attention to the following cases in which a foreign corporation qualified to do business in the forum has been permitted to invoke the doctrine: *Koster* v. *Lumbermen's Mutual Co., supra; Gulf Oil Corp.* v. *Gilbert, supra; Arizona Commercial Mining Co.* v. *Iron Cap Copper Co.*, 233 Mass. 522, 124 N. E. 281 (Sup. Jud. Ct., 1919); *Jackson & Sons* v. *Lumbermen's Mut. Casualty Co.*, 86 N. H. 341, 168 Atl. 895 (Sup. Ct., 1933). We submit that there should be no difference in principle between permitting a corporation qualified to do business in a forum to invoke the doctrine and permitting a domestic corporation to do so.

The cases cited by petitioners are not in conflict with the above cases. In *Williams* v. *Green Bay & W. R. Co.*, 326 U. S. 549 (1946), cited at page 12 of the petition, certain New York residents brought an action against a Wisconsin corporation in a New York state court to recover certain sums allegedly due on debentures issued by the defendant. The action was removed to a Federal Court in New York This Court held that the trial court improperly applied the *forum non conveniens* doctrine and held Wisconsin to be a more convenient forum. This Court said that trial in New York would not be vexatious or oppressive as the plaintiffs and five out of six of defendant's board of directors were New York residents, the defendant did business and maintained its financial office in New York, the debentures in question were payable in New York, directors meetings were held in New York, and the defendant kept its financial records, transfer books and minute books in New York. In the *Williams* case, unlike the case at bar, the cause of action

had a very close nexus with the forum state, and there were no uncontroverted facts suggesting that trial in the forum would be inconvenient, again unlike the case at bar.

In *Whitney* v. *Madden*, 400 Ill. 185, 79 N. E. 2d 593 (Sup. Ct., 1948), cert. den. 335 U. S. 828 (1948), cited by petitioners at page 12 of the petition, an Ohio resident brought an action against a Minnesota resident for an alleged libel resulting from a telegram sent from Minnesota to Ohio. The court affirmed a judgment dismissing the complaint on *forum non conveniens* grounds. The Supreme Court of Illinois expressly held that the Privileges-and-Immunities Clauses of Article 4, Section 2 and of the Fourteenth Amendment of the United States Constitution did not give the plaintiff, a non-resident, an absolute right to maintain his action in Illinois or preclude an Illinois court from applying the doctrine of *forum non conveniens*. That holding is in complete accord with and fully supports our position. Moreover, there is no language in the opinion which indicates that the said Privileges-and-Immunities Clauses operate differently in the case where a resident is the defendant.

In *Thistle* v. *Halstead*, 95 N. H. 87, 58 A. 2d 503 (Sup. Ct., 1948), cited by petitioners at page 14 of the petition, an action in assumpsit was brought in New Hampshire to recover for certain legal services performed by the plaintiff. Both parties were Massachusetts residents. The court affirmed a denial of the defendant's motion to dismiss on the ground of *forum non conveniens* because the defendant would be required to travel only 100 miles to the place of trial in New Hampshire, the defendant did not allege that trial in New Hampshire would occasion any undue expense or difficulty in procuring the attendance of witnesses, no jury view was desired, no peculiar questions of foreign law were envisaged, and the statute of limitations had run in

Massachusetts. The facts in the *Thistle* case are thus markedly dissimilar from those in the case at bar. In the *Thistle* case the defendant was not a resident of the forum and its motion was denied solely for the reasons above stated.

In *Vigil* v. *Cayuga Const. Corporation,* 185 Misc. 675, 54 N. Y. S. 2d 94 (City Ct., N. Y., 1945), aff'd without opinion 269 App. Div. 934, 58 N. Y. S. 2d 343 (Sup. Ct., App. Div., 1945), which is primarily relied upon by petitioners at page 14 of the petition, over a thousand former employees of the defendant brought an action *in contract* to recover additional wages allegedly due them for certain work performed by them in Cuba. The defendant was a New York corporation. The court construed a provision of the New York Constitution to mean that in that type of contract case any plaintiff had an absolute right to sue a New York resident in New York. The court, therefore, denied the defendant's motion to dismiss the complaint, but in so doing the court said at page 98:

> "* * * *The plea of forum non conveniens cannot be presented by a resident of the forum,* as the defendant, by hypothesis is. A different situation might arise if the prescribed methods of applying the Cuban law in this case were so dissimilar from our own methods that it would be highly inconvenient or impracticable for us to apply them or, if the machinery prescribed by Cuban law to which we should have to defer is so complicated that our courts cannot manage it. Loucks *v.* Standard Oil Co., 224 N. Y. 99, 120 N. E. 198; Slater *v.* Mexican National Railroad Company, 194 U. S. 120, 24 S. Ct. 581, 48 L. Ed. 900; cf. Reilly *v.* Steinhart, 217 N. Y. 549, 112 N. E. 468 * * *." (Italics ours.)

The first italicized sentence from the opinion above quoted is cited by petitioners at page 14. It will be observed

that petitioners' quotation is part of a sentence. The language of the court immediately following such sentence completely supports our contention. The court said that a resident of the forum might invoke the *forum non conveniens* doctrine if the applicable foreign law were dissimilar from that of New York so as to make it inconvenient or impracticable to apply that foreign law. That is precisely one of the contentions advanced by us, and finds potent support in *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120 (1904), cited by the court in its opinion in the *Vigil* case. In the *Slater* case certain Texas residents brought an action in a federal court in Texas against a Colorado corporation operating a railroad from Texas to Mexico City to recover damages for the death of plaintiffs' decedent in Mexico. This Court affirmed a judgment dismissing the complaint on the ground that the applicable Mexican law was too dissimilar from Texas law to be enforced in Texas. This is one of the important factors in the case at bar upon which we urge that the case should be dismissed. In the *Slater* case, this Court, per Mr. Justice Holmes, said at page 127:

> "* * * As the cause of action relied upon is one which is supposed to have arisen in Mexico under Mexican laws, the place of the death and the domicile of the parties have no bearing upon the case."

And at page 129:

> "* * * The defendant always can be found in Mexico, on the other side of the river, and it is to be presumed that the courts there are open to the plaintiffs, if the statute conferred a right upon them notwithstanding their absence from the jurisdiction, as we assume that it did, for the purposes of this part of the case. * * *"

It is submitted that the above cases cited by petitioners support the proposition that the instant action has been brought in an inconvenent forum and should accordingly be dismissed, and the fact that the defendant is a New Jersey corporation is immaterial. Petitioners cite no case holding that the aforesaid Privileges-and-Immunities Clauses preclude a resident defendant from invoking the *forum non conveniens* doctrine. If this Court were to hold that a resident of New Jersey may not invoke the *forum non conveniens* doctrine it would mean that the courts of New Jersey would be compelled to discriminate against New Jersey residents in favor of non-residents. The Privileges-and-Immunities Clauses of the United States Constitution certainly do not sanction or require such discrimination.

Petitioners make much of the fact that there is a dearth of cases in which a resident of the forum has successfully invoked the *forum non conveniens* doctrine. That this is so is not surprising for generally it would be convenient to have an action tried in a defendant's home state. However, in the case at bar there is presented the unusual case with very unusual circumstances where it is extremely inconvenient, vexatious and costly for the defendant to be compelled to defend the case in New Jersey.

Conclusion.

The sole contention of the petitioners is that the Privileges-and-Immunities Clauses of the United States Constitution guarantee them an absolute right to maintain the present action in New Jersey. We believe that petitioners have cited no case which supports their contention. We further believe and urge that petitioners' contention was correctly rejected by the New Jersey Supreme Court and

submit that the opinion of said court is sound and fully supported by well-reasoned authorities.

For the reasons hereinabove stated, we respectfully submit that this Court should deny the petition for a Writ of Certiorari.

Respectfully submitted,

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